90-1875

Supreme Court, U.S.
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NO.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1991

EUGENE C. BARD, et al., Petitioner
vs.
DONALD L. CROCKETT, et. al., Respondent[2]

PETITION FOR WRIT OF CERTIORARI

U.S. District Court Case Number 89-5025 CV-SW-8
Kansas City, Missouri, Eighth Circuit,
U.S. Court of Appeals, Case Number 90-2163 WM
St. Louis, Missouri, Eighth Circuit.

Eugene C. Bard by Eugene C. Bard
Eugene C. Bard, pro se

James F. Bard by James F. Bard
James F. Bard, pro se

Max L. Bard d/b/a by Max L. Bard
Max L. Bard, pro se

Bard & Bard Co.

Correspond with Max L. Bard
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[2] See Appendix at page APP. 18, 19 for complete list of respondents.

5

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals, Eighth Circuit, by its April 5, 1991 affirmations of the District Court's dismissal of Plaintiffs' pro se Second Amended Complaint, for failure to allege sufficient facts to state a cause of action, is in conflict with the decision of another United States Court of Appeals on the same manner. U.S. vs. Masters, 924 F. 2d 1362 (7th Circuit 1991); U.S. vs. Sedima, 473 U.S. 499, 87 L. Ed 2d 346, 105 S. CT. 3275.; Roeder vs. Alpha Industries, Inc. 814 F 2d 22 (CA 1 1987); Barticheck vs. Fidelity Union Bank/First National State 832 F 2d (CA 9 1987); 52 ALR Red 818.

2. Whether the United States Court of Appeals, Eighth Circuit, in affirming the District Court's dismissal of plaintiffs' pro se second amended complaint for failure to allege sufficient facts to state a cause of action, pursuant to 18 U.S.C. Section 1964 (c), decided

a Federal question in a way that conflicts with applicable decisions of this court. H.J. Inc. vs. Northwestern Bell, 106 L. Ed 2nd 195 (1989); U.S. vs. R.J. Reynolds Tobacco Co. 416 F. Supp. 316 (1976).

3. Whether the United States Court of Appeals Eighth Circuit's affirming of the District Court's dismissal of Plaintiffs' 95 page Second Amended Complaint for failure to state a cause of action pursuant to 18 U.S.C. Section 1964 (c) where it is unclear whether or not, no relief could be granted plaintiffs under any set of facts that could be proved consistent with the allegations. H.J. Inc. vs. Northwestern Bell. 106 L. Ed 2nd 195 (1989)

4. Whether the United States Court of Appeals, Eighth Circuits' dismissal of plaintiffs complaint pursuant to 18 U.S.C. Section 1964 (c) constituted a violation of the separation of powers clause of the constitution of the United States, as to call for an exercise

of this courts power of supervision. U.S. vs. R.J. Reynolds Tobacco Co. 416 F. Supp. 316 (1976); H.J. Inc. vs. Northwestern Bell 106 L. Ed 2nd 195 (1989); Article III of the Constitution of the United States of America3; U.S. Parole Commission vs. Geraghty, Pa. 1980, S. Ct 1202, 63L Ed 2d 479, 445 U.S. 388.; 76 Columbian L. Review 371 (1976); Morrison vs. Olson, 487 Us 654, 101 L Ed 2d 569; Bowsher vs. Snynar 478 US 725, 92 L Ed 2d.

[3] See at Appendix pages APP. 15,16,17, Article I, Section 1, & Article III, of the United States Constitution verbatim copy.

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Petitioners Pray that a Writ of Certiorari issue to review the Opinions of the United States Court of Appeals, Eighth Circuit, entered on May 10, 1991; (Yellow face) Petition for a Rehearing with Suggestion for a Rehearing EnBanc Filed by petitioners on April 18, 1991.

Opinion

The Order of the United States Court of Appeals on May 10, 1991: "Appellants Suggestions for rehearing en banc has been considered by the court and is denied by the reason of the lack of a majority of the active judges"- is not published and is set forth in Appendix, page APP. 1, 2 [1]

[1] Appendix shall be cited as APP.

And the decision of the United States Court of Appeals Eighth Circuit: concerning the (blue faced) petitioners' August 15, 1990 Brief in Chief requesting a hearing by the Proposition #1 "The District Court for the Western District of Missouri erred in dismissing plaintiffs Second Amended complaint in finding that it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations contained in the Plaintiff's Second Amended Petition".

Opinion

Submitted on March 19, 1991, Filed: April 5, 1991. Before John R. Gibson, Bowman, and Loken, Circuit Judges. PER CURIAM, "Eugene C. Bard, James F. Bard, and Max L. Bard doing business as Bard & Bard Company, Appeal from the District Court's dismissal without predjudice of their civil RICO action, filed under 18 USC Section 1964 (c) for failure to state a claim,

the District Court concluded" - is not published and is set forth in Appendix at page APP. 3, 4.

And the decision of the United States District Court Eighth Circuit: concerning the petitioners 95 page Second Amended Petition filed on September 17, 1989, said Second Amended Petition's filing followed an August 23, 1989 order, granting motions of several defendants for a more definite statement and stay of discovery. The September 17, 1989 Second Amended Petition was dismissed on June 14, 1990 under rule 12(b) (6) for failure to state a claim upon which relief can be granted.

Opinion

On June 14, 1990 the United States District Court, Eighth Circuit Ordered that defendants motions to dismiss are granted. It is further Ordered that Plaintiff's complaint is dismissed without predjudice by Honorable Joseph E. Stevens, Jr. United States District Judge (Eighth Circuit) June 14, 1990, the entire order

is not published and is set forth in the Appendix at page APP. 5 thru 12.

And Petitioners' filing of a Motion to the United States Court of Appeals Eighth Circuit on May 20, 1991-Motion for Stay of Mandate Pending Certiorari-

Opinion

The Order returned by the Clerk of the United States Court of Appeals Eighth Circuit denied on May 29, 1991 - is not published and is set forth in Appendix at page APP.13, 14.

JURISDICTION

This Court's jurisdiction is invoked under Article III of the Constitution of the United States of America[3] by virtue of the United States Court of Appeals, Eighth Circuits' decision on April 5, 1991, affirming the Districts Courts dismissal of plaintiffs' pro se complaint, for failure to state a cause of action, pursuant to 18 USC Section 1964 (c).

This Court's jurisdiction is invoked under 28 USC Section 1254 (1) and 28 USC Section 2102 (c). The United States Constitution Article I, Section 1; Article III.[3]

[3] See at Appendix pages APP. 15, 16, 17, Article I, Section 1, & Article III, of the U.S. Constitution verbatim copy.

CONSTITUTIONAL PROVISION STATUTES AND RULES INVOLVED

A. This case was brought by virtue of Federal Statute, title 18, U.S.C., Section 1964 (c), which provides:

> Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefore in any appropriate United States District Court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

B. Doctrine of Separation of Powers, between the Legislative and Judicial branches of the United States Government. U.S. Constitution, Article I, Section 1; Article III.[3]

[3] See at Appendix pages 15,16,17, Article I, Section 1, & Article III, of the U.S. Constitution Verbatim copy.

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals, Eighth Circuit, by its April 5, 1991 affirmations of the District Court's dismissal of Plaintiffs' pro se Second Amended Complaint, for failure to allege sufficient facts to state a cause of action, is in conflict with the decision of another United States Court of Appeals on the same manner. U.S. vs. Masters, 924 F. 2d 1362 (7th Circuit 1991); U.S. vs. Sedima, 473 U.S. 499, 87 L. Ed 2d 346, 105 S. CT. 3275.; Roeder vs. Alpha Industries, Inc. 814 F 2d 22 (CA 1 1987); Bartlcheck vs. Fidelity Union Bank/First National State 832 F 2d (CA 9 1987); 52 ALR Red 818.

2. Whether the United States Court of Appeals, Eighth Circuit, in affirming the District Court's dismissal of plaintiffs' pro se second amended complaint for failure to allege sufficient facts to state a cause of action, pursuant to 18 U.S.C. Section 1964 (c), decided

a Federal question in a way that conflicts with applicable decisions of this court. H.J. Inc. vs. Northwestern Bell, 106 L. Ed 2nd 195 (1989); U.S. vs. R.J. Reynolds Tobacco Co. 416 F. Supp. 316 (1976).

3. Whether the United States Court of Appeals Eighth Circuit's affirming of the District Court's dismissal of Plaintiffs' 95 page Second Amended Complaint for failure to state a cause of action pursuant to 18 U.S.C. Section 1964 (c) where it is unclear whether or not, no relief could be granted plaintiffs under any set of facts that could be proved consistent with the allegations. H.J. Inc. vs. Northwestern Bell. 106 L. Ed 2nd 195 (1989)

4. Whether the United States Court of Appeals, Eighth Circuits' dismissal of plaintiffs complaint pursuant to 18 U.S.C. Section 1964 (c) constituted a violation of the separation of powers clause of the constitution of the United States, as to call for an exercise

of this courts power of supervision. U.S. vs. R.J. Reynolds Tobacco Co. 416 F. Supp. 316 (1976); H.J. Inc. vs. Northwestern Bell 106 L. Ed 2nd 195 (1989); Article III of the Constitution of the United States of America[3]; U.S. Parole Commission vs. Geraghty, Pa. 1980, S. Ct 1202, 63L Ed 2d 479, 445 U.S. 388.; 76 Columbian L. Review 371 (1976); Morrison vs. Olson, 487 Us 654, 101 L Ed 2d 569; Bowsher vs. Snynar 478 US 725, 92 L Ed 2d.

[3] See at Appendix pages APP. 15,16,17, Article I, Section 1, & Article III, of the United States Constitution verbatim copy.

STATEMENT OF CASE

On March 17, 1989, plaintiffs Bards filed their pro se complaint in the U.S. District Court, Eighth Circuit, against 35 defendants pursuant to 18 U.S.C. Section 1964 (c); and on September 17, 1989, plaintiffs filed their Second Amended complaint, and with the courts permission, added one (1) additional defendant.

Plaintiffs' Second Amended Complaint alleged varied and many acts and occurrences of racketeering, mail fraud, and other injuries to plaintiffs' business and property, prohibited by RICO, 18, U.S.C. sections 1962, 1964 (c).

On June 14, 1990, the District Court dismissed plaintiffs' complaint, for failure to state a claim, under Rule 12 (b) (6). This District Court made a finding that plaintiffs had not alleged the "enterprise" element of RICO sufficiently in that "no ascertainable structure distinct from that inherent in a pattern of racketeering". The said District

Court's dismissal order cited the Mafia family as an example of this "ascertainable structure distinct from that of the predicate acts" and relied on the Eighth Circuits decisions of U.S. vs. Flynn, 852 F. 2d 1045 (8th Circuit); and U.S. vs. Bledsoe, 647 F. 2d (8th Circuit), that amounted to an arbitrary and unreasonable exercise of judicial discretion, in conflict with other circuits and the United States Supreme Court's decision in H.J. Inc. vs. Northwestern Bell 106 L. ED 2nd 195 (1989); U.S. vs. Masters, 924 F. 2d (7th Cir. 1991).

Plaintiffs complaint alleged by name the original meeting of some thirty odd, representing and represented, defendants, made up of business associates, friends, relation, formal agents of oil companies and subsidiaries, banks, pseudo unions, a person falsely claiming to be in close working relationship with the Federal Trades Commission, all involving the enterprise and its structural perimeters, the

source of its command to action, as well as the conspiratorial objectives and structural economic relationship of said enterprise organization. Plaintiffs' said complaint then went on to allege varied and many criminal acts, threats and occurrences, by the named defendants, all in time, that showed predicate acts, as well as various patterns thereof, that injured plaintiffs' property and business.

Plaintiffs' complaint, in addition, alleged varied and many economic acts, as well as criminal acts, that injured not only the plaintiffs' business and property but also them personally all within the continuity of the defendants enterprise from 1970 through to 1989 when it was projected the defendants enterprising influence will continue.

The District Court's rigid advance judicial interpretive fixing of the available methods by which plaintiffs may have been able to prove that defendants unlawful and criminal act's were

with in the RICO statutes' core, after discovery, amounted to a breach of judicial discretion by the district court. Especially, due to the conflict with other circuits' interpretation of the Federal statute and decision of this Court. U.S. vs. Masters, 924 F 2d, 1362, (7th Circuit 1991); Pennsylvania R. Co. vs. O'Rourke, 73 S. CT. 302, 344 U.S. 334, 97 L. Ed 367; Roeder v. Alpha Industries Inc., 814 F 2d 22 (CA A 1987); Barticheck vs. Fidelity Union Bank/First National State, 832 F 2d 36 (CA 3 1987); Sun Savings and Loan Assn. vs. Dierdorff, 825 F 2d 187 (CA 9 1987); H.J. Inc. vs. Northwestern Bell, 106 L. ED. 2nd 195 (1989).

Petitions appealed to the United States Court of Appeals, Eighth Circuit, an August 15, 1990; and, on April 5, 1991, the United States Court of Appeals, Eighth Circuit, affirmed the District Courts dismissal of plaintiffs' petition, thereby sanctioning the departure by

the lower District Court, from this Court's decision in H.J. Inc. v. Northwestern Bell, supra, so as to call for an exercise of this Court's power of supervision, H.J. Inc. vs. Northwestern Bell, 106 L. Ed. 2nd 195 (1989).

On April 18, 1991, plaintiffs petitioned the United States Court of Appeals Eighth Circuit for rehearing en banc, which was denied on May 10, 1991.

On May 20, 1991, petitioners filed a motion for a stay of mandate pending certiorari which was denied on May 29, 1991.

CONCLUSION

The Petition for a writ of certiorari should be granted and after review the United States Court of Appeals, Eighth Circuit's dismissal reversed. Unless supervised by this court, the United States Court of Appeals, Eighth Circuits' advanced judicial fixing of the methods available to prove Congressional RICO

legislation violates, will continue to violate the separation of Powers doctrine of the United States Constitution, Article 1., Section 1. and Article III [3], there of. This court's ruling in H.J. Inc. vs. Northwestern Bell, 106 L ED 2nd 195 (1989), should be upheld to assure uniform policing of the Federal RICO legislation among the several circuits and districts.

[3] See at Appendix pages APP. 15,16,17, Article I, Section 1, & Article III, of the United States Constitution verbatim copy.

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MAX L. BARD d/b/a
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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1991

EUGENE C. BARD, et al., Petitioner
vs.
DONALD L. CROCKETT, et. al., Respondent[2]

U.S. District Court Case Number 89-5025 CV-SW-8
Kansas City, Missouri, Eighth Circuit,
U.S. Court of Appeals, Case Number 90-2163 WM
St. Louis, Missouri, Eighth Circuit.

CERTIFICATE OF SERVICE

EUGENE C. BARD, JAMES F. BARD AND MAX L. BARD, PETITIONERS IN THE ABOVE CAPTIONED CASE HEREBY CERTIFY THAT ON THIS 4th DAY OF June, 1991, A TRUE AND CORRECT COPY OF THE ABOVE AND FOREGOING:

PETITION FOR WRIT OF CERTIORARI

TO RESPONDENTS OR THEIR ATTORNEYS WAS MAILED WITH PROPER POSTAGE THERE ON TO THE FOLLOWING LIST:

1. ROBERT L. BRADLEY OF BLANCHARD, VAN FLEET, MARTIN, ROBERTSON, DERMOTT, 320 W. 4TH STREET, P.O. BOX 1626, JOPLIN, MO 64802, ATTORNEY FOR DEFENDANTS: DONALD L. CROCKETT (2), BURL F. HAMILTON (3), CROCKETT OIL CO. (4), JOPLIN OIL COMPANY(5).

2. GLENN A. BURKHART OF MANN, WALTER, BURKHART, WEATHERS & WALTER, 300 JOHN Q. HAMMONS PARKWAY, SUITE 600, SPRINGFIELD, MO 65806. AND

3. JOHN A. VERIN III OF ARMSTRONG, TEASDALE, SCHLAFLY, DAVIS, DICUS, 1700 CITY CENTER SQUARE, 1100 MAIN STREET, KANSAS CITY, MO 64105, ATTORNEYS FOR DEFENDANTS: CONOCO, INC.(6), E.I. DUPONT DE NEMOURS AND COMPANY, INC. (7).

4. LEE ANN MILLER AND RICHARD C. MILLER OF WOOLSEY, FISHER, WHITEAKER AND MCDONALD, 300 S. JEFFERSON, SUITE 600, P.O. BOX 1245, SPRINGFIELD, MO 65801, ATTORNEYS FOR DEFENDANTS: TOTAL PETROLEUM, INC.(8.)

5. JOHN KILROY, JR. AND PHILLIP W. BLEDSOE, OF SHUGHART, THOMSON, KILROY, 120 W. 12TH ST., KANSAS CITY, MO 64105, ATTORNEYS FOR DEFENDANTS: MOBIL CORPORATION (9), MOBIL OIL CORPORATION (10), TRI ANGLE REFINERIES, INC. (29), KERR MCGEE CORPORATION (30).

6. GRANT W. SCOTT AND FREDRICH H. LAAS, OF SPENCER SCOTT AND DWYER, FIRST NATIONAL MERCANTILE BUILDING, FOURTH & MAIN ST., JOPLIN, MO., 64801, ATTORNEYS FOR DEFENDANTS: FIRST NATIONAL MERCANTILE BANK AND TRUST CO. (12), MERCANTILE BANCORPORATION, INC. (13), SUN REFINING AND MARKETING CO. (11), FINA OIL AND CHEMICAL CO., (32).

7. WILLIAM R. MODRCIN,OF MORRIS AND LARSON, P.C., FOURTH FLOOR, TWO CROWN CENTER, 2420 PERSHING RD., KANSAS CITY, MO 64108-2574, ATTORNEY FOR DEFENDANTS: LAWRENCE V. "LARRY" HICKEY, JR. (14), AND VIRGINIA HICKEY (15).

8. JAMES F. DUNCAN OF WATSON, ESS, MARSHALL, ENGGAS,
1010 GRAND AVE., KANSAS CITY, MO 64106-2271, ATTORNEY FOR
DEFENDANTS: UNITED MISSOURI BANK OF JOPLIN, MO. (16), UNITED MISSOURI BANCSHARES, INC. (17).

9. DANIEL E. SCOTT OF COPELAND, SCOTT AND WHELAN, 614 PEARL ST., P.O. BOX 2845, JOPLIN, MO 64803, ATTORNEY FOR DEFENDANTS: LARRY H. MARTIN (18), L. & E. MARTIN OIL COMPANY (19).

10. LOYD E. OWEN, BENARD J. RHODES, MARIETTA PARKER OF GAGE AND TUCKER, 2345 GRAND AVE., P.O. BOX 418200, KANSAS CITY, MO 64141, ATTORNEYS FOR DEFENDANTS: TEXACO, INC. (20), DERBY REFINING COMPANY, a/k/a COASTAL DERBY REFINING COMPANY (33) COASTAL REFINING AND MARKETING COMPANY (34), THE COASTAL CORPORATION (38).

11. JERRY E. WELLS, 333 W. 5TH ST., P.O. BOX 1566, JOPLIN, MO 64802 ATTORNEY FOR DEFENDANT: DAVID LEE GARRISON (21).

12. F. RICHARD VAN PELT, OF VAN PELT AND VAN PELT, 1200 E. WOODHURST DRIVE, #U100, SPRINGFIELD, MO 65804, ATTORNEY FOR DEFENDANTS: ROBERT W. HENSON (22), MAYNARD L. HENSON (23), HENSON OIL CO. (24).

13. STEPHEN G. PENUEL AND NEAL F. LEHMAN, 1232 ADAMS BUILDING, BARTLESVILLE, OK. 74004, AND

GLENN A. BURKHART OF MANN, WALTER, BURKHART,
WEATHERS, WALTER, 300 JOHN Q. HAMMONS PARKWAY, SUITE 600,
SPRINGFIELD, MO 65806, ATTORNEYS FOR DEFENDANT: PHILLIPS
PETROLEUM COMPANY (25).

14. PAUL E. VARDEMAN AND CATHY J. DEAN OF POLSINELLI, WHITE, VARDEMAN, SHALTON, 4705 CENTRAL ST., KANSAS CITY, MO 64112, ATTORNEYS FOR DEFENDANT: EXXON CORPORATION (31).

15. LAURENCE H. FLANIGAN OF FLANIGAN, MCCANSE AND LASELY, 400 GRANT ST., CARTHAGE, MO, 64836, ATTORNEY FOR DEFENDANTS: RAY W. GRACE

(35), JERRY W. PERRY (36), GRACE ENERGY CORPORATION (37).

16. WILLIAM J. FLEISCHAKER, OF ROBERTS, FLEISCHAKER AND WILLIAMS, 418 WALL ST., P.O. BOX 996, JOPLIN, MO 64802, ATTORNEYS FOR DEFENDANTS: MID-WESTERN OIL & SUPPLY CO. (28), IDA J. BENNETT (27), ROBERT M. JEFFRIES (26).

17. JOHN L. SHOEMAKER , CONOCO, INC.- LEGAL DEPT., 600 N. DAIRY ASHFORD, MCLEAN BLDG., SUITE 2022, P.O. BOX 2197, HOUSTON, TX 77252-2197, ATTORNEY FOR DEFENDANT: CONOCO, INC. (6).

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 90-2163

Eugene Bard, James F. Bard, Max L. Bard, d/b/a Bard and Bard Co.,	*	
	*	Order Denying
	*	Petition for
Appellants,	*	Rehearing with
	*	Suggestion for
v.	*	Rehearing
	*	En Banc
Donald L. Crockett, Individually, Crockett Oil Company, Burl F. Hamilton, Individually Joplin Oil Company, Conoco, Inc., E.I. DuPont de Nemours & Company, Total Petroleum Inc. Mobil Corp., & Mobil Oil Corporation, Sun Refining & Marketing Company, First National Mercantile Bank & Trust Company of Joplin, MO Mercantile Bancorporation, Inc., Lawrence V. "Larry" Hickey, Jr., Virginia Hickey, United Missouri Bank of Joplin MO, United Missouri Bancshares Inc., Larry H. Martin, Individually, L & E Martin Oil Company, Texaco, Inc., David Lee Garrison, Robert W. Henson, Maynard L. Henson, Henson Oil Co., Phillips Petroleum Company Robert M. "Bob" Jeffries, Ida J. Bennett, Individually, Midwestern Oil & Supply	*	

Company, Tri Angle Refineries, Inc., Kerr McGee Corporation Exxon Corporation, Fina Oil & Chemical Company, Derby Refining Company, Coastal Refining & Marketing, Inc., Ray W. Grace, Individually, Grace Energy Corporation, and John Doe or Richard Roe,

Appellees.

Appellant's suggestion for rehearing en banc has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc.

Petition for rehearing by the panel is also denied.

May 10, 1991

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

IN THE UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

No. 90-2163-WM

EUGENE C. BARD, et al., Appellants

vs.

DONALD L. CROCKETT, et al., Appellees.

Submitted: March 19, 1991

Filed: April 5, 1991

Before JOHN R. GIBSON, BOWMAN, AND LOKEN, Circuit Judges.

PER CURIAM.

Eugene Bard, James F. Bard, and Max L. Bard, doing business as Bard and Bard Company, appeal from the District Court's[1] dismissal

---

[1]The Honorable Joseph E. Stevens, Jr., United States District Court for the Western District of Missouri.

without prejudice of their civil RICO action, filed pursuant to 18 U.S.C. Section 1964 (c), for failure to state a claim. The District Court concluded that the Bards' second amended complaint failed to allege facts demonstrating that the numerous defendants named in the case were engaged in an enterprise, as that term is defined in United States v. Bledsoe, 674 F.2d 647, 664-65 (8th Cir.), cert. denied, 459 U.S. 1040 (1982), and United States v. Flynn, 852 F.2d 1045, 1051 (8th Cir.), cert. denied, 488 U.S. 974 (1988). Upon review of the record, we agree and thus affirm the judgment of the District Court. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

EUGENE C. BARD, et al.	)	Filed June 14, 1990
	)	
Plaintiffs,	)	
vs.	)	
	)	No. 89-5025-CW-SW-8
Donald L. Crockett, et al.	)	
	)	
Defendants.	)	

ORDER

Plaintiffs filed this lawsuit against thirty-six named defendants and various John Doe individuals, partnerships, and corporations, alleging that they engaged in a pattern of racketeering activity in violation of the Racketeering Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Section 1964 (c). On August 23, 1989, the court granted the motion of several defendants for a more definite statement, ordered plaintiffs to file the same within 25 days of the date of the order, denied defendants' motion seeking an order requiring plaintiffs employ counsel in this matter, and ordered a stay of discovery until plaintiffs

filed their more definite statement. In response to the court's order, plaintiffs filed a 95 page second amended complaint on September 19, 1989. Presently before the court are the defendants' motions to dismiss or, in the alternative, for more definite statement. For the reasons noted below, defendants' motions to dismiss are granted. (original) Doc. #201.

Under a Rule 12(b) (6) motion to dismiss for failure to state a claim upon which relief can be granted, the complaint is to be construed in a light most favorable to plaintiff and its allegations are to be taken as true. Scheuer v. Rhodes, 416 U.S. 232 (1974). The critical issue then is the sufficiency of the complaint, which is governed by the pleading standard stated in Fed. R. Civ. P. 8(a). Rule 8(a) requires that the complaint contain a short and plain statement of the claim showing that the claimant is entitled to relief. The resolution of whether a claim is stated encompasses the

determination of whether relief can be granted on the claim. Davis v. Passman, 442 U.S. 228 (1979). The Supreme Court has stated that

> in appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Conley v. Gibson, 355 U.S. 41, 45 (1957). In the instant case, the court finds that plaintiffs could not prove any set of facts which would support a RICO claim against any of the defendants entitling plaintiffs to relief. In fact, plaintiffs have failed to allege necessary facts that would support a violation of RICO.

A violation of RICO, 18 U.S.C. Section 1962 (c), requires "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima, S.P.R.L. v. Imrex Co., Inc. 473 U.S. 479, 496 (1985). An enterprise must

exhibit three basic characteristics: "(1) a common or shared purpose; (2) some continuity of structure and personnel; (3) an ascertainable structure distinct from that inherent in a pattern of racketeering." United States v. Flynn, 852 F. 2d 1045, 1051 (8th Cir. 1988), cert. denied, 109 S. Ct. 511 (1988). The distinct structure of a RICO enterprise may be demonstrated by evidence that it has "an organizational pattern or system of authority beyond what was necessary to perpetuate the predicate crimes. The command system of a Mafia family is an example of this type of structure." United States v. Bledsoe, 674 F. 2d 647, 665, cert. denied, 459 U.S. 1040 (8th Cir. 1982).

In the present case, plaintiffs contend that

> [o]n or about January 1, 1970 until October 16, 1970, some or all of the Defendants, their Agents and Servants entered into a massive conspiracy, wherein they colluted [sic] to commit illegal acts toward plaintiffs...in order to soften up, said plaintiffs'

> competitive efforts by the target date of a nationwide price raise, planned by said Defendants on November 17, 1970.

Plaintiffs' Second Amended Complaint, hereinafter Complaint, at 28. Plaintiffs then allege a series of meetings which they contend demonstrate these efforts. For example, plaintiffs state that on November 17, 1970 "[s]ome Defendants, their Agents and Servants here in after [sic] named, physically assembled at Keller's Barbeque Restaurant at 1514 West 7th Street, Joplin, Jasper County, Missouri. . . to assist locally in the regional coordination of Mobil Oil Corporation's announced effort and intent to raise the price of gasoline motor fuel nationwide . . . ." Complaint at 20. Plaintiffs allege that after the meeting at Keller's Barbeque, Delmar Holden "bedecked with the blessings of the participants of the Keller's Barbeque meeting left the meeting and gathered several members of his Four State Gasoline

Dealer's Association" to picket plaintiffs' gas station.

Complaint at 25.

Plaintiff's second amended complaint goes on to allege meetings on December 7, 1970 and January 4, 1971 about the "price war situation," Complaint at 26, a series of telephone calls, intended to "harass, terrorize and threaten each of said plaintiffs. . .," as well as destruction of plaintiffs' property from 1970 to 1977, Complaint at 30-55; and an attempt by Dr. Donald Crockett to buy plaintiffs' business, Complaint at 55; more telephone calls in 1977 and further attempts by some or all defendants to get plaintiffs' gas prices up, Complaint at 56-60; more telephone calls in 1978-79 and various allegations concerning about the banking practices in Joplin, Missouri, Complaint at 64-68; various allegations about the Joplin Globe Newspaper and television Channel 16 being involved in the oil business, Complaint at

68-70; vague allegations about Coastal Corporation owing plaintiffs money and then Coastal Corporation filing suit against plaintiffs, Complaint at 70-74; vague allegations about some or all defendants breaking into plaintiffs' place of business, Complaint at 70; a nearly incoherent allegation about a sawed off shotgun leaning against a tree near plaintiff Max Bard's home which made him fear for his life, Complaint at 75-77; and allegations about Joplin bankers conspiring with some defendants to destroy plaintiffs' credit from 1981 to 1987, Complaint at 80-84.

The above series of alleged events do not state facts indicating an enterprise for purposes of RICO. Nowhere in the second amended complaint is there any allegation of an organizational pattern or system of authority which demonstrates an enterprise. Thus, the court finds that plaintiffs could prove no set of facts in support of their RICO claim which

would entitle them to relief. Accordingly, pursuant to Rule 12 (b) (6), it is

ORDERED that defendant's motions to dismiss are granted. It is further

ORDERED that plaintiff's complaint is dismissed without prejudice.

JOSEPH E. STEVENS, JR.

UNITED STATES DISTRICT JUDGE

June 14, 1990

a true copy

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 90-2163

Eugene Bard, James F. Bard, Max L. Bard, d/b/a Bard and Bard Co.,	*	
Appellants,	*	Appeal from the United States Court for the Western District of Missouri.
v.	*	
Donald L. Crockett, Individually, Crockett Oil Company, Burl F. Hamilton, Individually Joplin Oil Company, Conoco, Inc., E.I. DuPont de Nemours & Company, Total Petroleum Inc. Mobil Corp., & Mobil Oil Corporation, Sun Refining & Marketing Company, First National Mercantile Bank & Trust Company of Joplin, MO Mercantile Bancorporation, Inc., Lawrence V. "Larry" Hickey, Jr., Virginia Hickey, United Missouri Bank of Joplin MO, United Missouri Bancshares Inc., Larry H. Martin, Individually, L & E Martin Oil Company, Texaco, Inc., David Lee Garrison, Robert W. Henson, Maynard L. Henson, Henson Oil Co., Phillips Petroleum Company Robert M. "Bob" Jeffries, Ida J. Bennett, Individually, Midwestern Oil & Supply	*	

Company, Tri Angle Refineries, Inc., Kerr McGee Corporation Exxon Corporation, Fina Oil & Chemical Company, Derby Refining Company, Coastal Refining & Marketing, Inc., Ray W. Grace, Individually, Grace Energy Corporation, and John Doe or Richard Roe,

Appellees.

Appellants' motion for stay of mandate pending certiorari proceedings has been considered by the court and is denied.

May 29, 1991

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

The Constitution of the United States

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and

Treaties made, or which shall be made, under their Authority;-to all Cases affecting Ambassadors, other public Ministers and Consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a Party;-to Controversies between two or more States;-between a State and Citizens of another State;-between Citizens of different States;-between Citizens of the same State claiming Lands under Grants of different States; and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

IN THE SURPREME COURT OF THE UNITED STATES

October Term 1991

U.S. District Court Case Number 89-5025 CV-SW-8
Kansas City, Missouri, Eighth Circuit,
U.S. Court of Appeals, Case Number 90-2163 WM
St. Louis, Missouri, Eighth Circuit.

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1. EUGENE C. BARD,
JAMES F. BARD,
MAX L. BARD d/b/a
BARD & BARD COMPANY

Petitioners

vs.

2. DONALD L. CROCKETT individually,
3. BURL F. HAMILTON individually,
4. CROCKETT OIL COMPANY,
5. JOPLIN OIL COMPANY,
6. CONOCO, INC., and parent company
7. E.I. DUPONT de NEMOURS AND COMPANY,
8. TOTAL PETROLEUM, INC.,
9. MOBIL CORP., and parent company
10. MOBIL OIL CORP.,
11. SUN REFINING AND MARKETING COMPANY,
12. FIRST NATIONAL MERCANTILE BANK AND TRUST COMPANY, and parent company
13. MERCANTILE BANCORPORATION INC.,
14. LAWRENCE V. "LARRY" HICKEY JR., and individually,
15. VIRGINIA HICKEY, and individually,
16. UNITED MISSOURI BANK OF JOPLIN MISSOURI, and parent company
17. UNITED MISSOURI BANCSHARES, INC.
18. LARRY H. MARTIN, individually,
19. L & E MARTIN OIL COMPANY,
20. TEXACO, INC.,
21. DAVID LEE GARRISON individually,
22. ROBERT W. HENSON individually,
23. MAYNARD L. HENSON individually,

24. HENSON OIL COMPANY,
25. PHILLIPS PETROLEUM COMPANY,
26. ROBERT M. "BOB" JEFFERIES individually,
27. IDA J. BENNETT individually,
28. MIDWESTERN OIL & SUPPLY COMPANY,
29. TRI ANGLE REFINERIES, INC., and parent company
30. KERR MCGEE CORPORATION, and major supplier
31. EXXON CORPORATION,
32. FINA OIL & CHEMICAL COMPANY,
33. DERBY REFINING COMPANY,a/k/a COASTAL DERBY REFINING COMPANY and
34. COASTAL REFINING & MARKETING, INC., See #38 for parent company
35. RAY W. GRACE individually,
36. JERRY J. PERRY individually,
37. GRACE ENERGY CORPORATION,
38. THE COASTAL CORPORATION, the added 36th Defendant
39. JOHN DOE OR RICHARD ROE individuals partnerships, corporations, wherever, or any legally approachable organization, and whenever identified, as involved in this case and during this case, in any State or territory of the United States of America.

Respondents

APPLICATION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES SUPREME COURT

EUGENE C. BARD
JAMES F. BARD
MAX L. BARD d/b/a
BARD AND BARD COMPANY

by:_____
EUGENE C. BARD, Pro Se

by:_____
JAMES F. BARD, Pro Se

by:_____
MAX L. BARD, Pro Se

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